IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/03/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO. 7631 OF 1997

Mrs. Santhanam Kanthimathi,
W/o. Raja Seetharaman .. Petitioner

-Vs-

1. Manonmaniam Sundaranar University,
Tirunelveli,
rep. by its Registrar

2. The Selection Committee, constituted
for the post of Librarian,
Manonmaniam Sundaranar University,
rep. by its Chairman,
Tirunelveli.

3. Mr.K.S. Raghavan,
Subject Expert, Member
Selection Committee,
Manonmaniam Sundaranar University,
Tirunelveli.

4. Mr.K. Neelakandan
Deputy Librarian,
Manonmaniam Sundaranar University,
Tirunelveli. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. Arvind P. Datar
Senior Counsel for
Mr.R. Sundaram

For Respondents 1-2 : Mr.N.G.R. Prasad for
M/s. Row & Reddy

For Respondent-3 : Mr.R. Sundarajan

For Respondent-4 : Mr.M. Muthupandian

For Respondent-5 : Mr.C. Kartick for
Mr.T.S. Gopalan

:J U D G M E N T

In the present writ petition, the petitioner has prayed for issuing writ of certiorarified mandamus for quashing the Syndicate Resolution No.65 of the first respondent dated 31.5.1997 and for directing the respondents 1 and 2 to appoint the petitioner as University Librarian.

2. The first respondent published a notice inviting applications for various posts, including the post of University Librarian for the University. Petitioner herein was one of the applicants. The Selection Committee recommended the names of the present respondents 4 and 5. Respondent No.4, who was at Serial No.1 of the Selection list, did not join and therefore, respondent No.5 joined the post. The writ petition was initially filed with a prayer to forbear the respondents 1 and 2 from appointing the respondents 4 and 5. However, since respondent No.5 had joined, the amended prayer is to quash such appointment and to issue further direction to appoint the present petitioner.

3. The main contention of the petitioner in the writ petition is to the effect that respondents 4 and 5 and, at any rate, respondent No.5 did not have the requisite qualification as per U.G.C. norms and as such ineligible for the selection. A counter affidavit has been filed by the University challenging the assertions made by the petitioner.

4. It is not disputed that in the meantime, respondent No.5, who was functioning as Librarian pursuant to the selection, has expired and the post has fallen vacant. In view of such subsequent event, learned counsel for the University has submitted that at any rate a new selection process would commence and it would be open to the petitioner to file a fresh application as and when new selection process commences.

5. Learned senior counsel appearing for the petitioner, however, contended that since the respondent No.5 was not eligible and respondent No.4 had refused to join even after selection, an appropriate direction may be issued to the University to appoint the petitioner. For the aforesaid purpose, learned counsel for the petitioner relied upon the decision of the Supreme Court reported in 2000(8) SCC 395 ( BADRINATH v. GOVERNMENT OF TAMIL NADU AND OTHERS).

6. Since respondent No.5 has expired and a vacancy has arisen, it is no longer required to consider as to whether respondent No.5 was eligible at the time of selection. It goes without saying that when a new selection process would take place, the University would keep all the rules and regulations regarding eligibility to issue fresh advertisement.

7. The remaining question to be decided is as to whether in the peculiar facts and circumstances of the case, a direction should be issued for

appointment of the petitioner. It is of course true that respondent No.4, who was selected at S.No.1, had not joined. It however appears that apart from respondent No.4, several other candidates had appeared. The selection committee had recommended the names of the respondents 4 and 5 only. The position of the petitioner in the merit list is not available. It is apparent that the selection committee had recommended only the names of two persons without listing the names of all the candidates according to their merit. In the absence of any such merit list, indicating the position of the petitioner, it would be unsafe to hazard at this stage that the petitioner would have been the next choice.

8. Learned counsel for the petitioner has contended that an application for impleading other candidates had been filed and notice had been issued to those candidates, but none of them chose to appear. Non-appearance of any of the candidates inspite of notice of such impletion petition would imply that they had no objection to be impleaded in the writ petition, but it cannot be inferred that those candidates were not interested in the matter relating to appointment.

9. Learned senior counsel for the petitioner has further contended that all other candidates, except the petitioner and Respondent No.4, were ineligible as per UGC norms and as such the petitioner should be appointed.

10. From the materials available on record, I am unable to accept such a submission of the learned counsel for the petitioner. It appears that at least one of the other candidates was eligible even applying the UGC norms. Even otherwise assuming that UGC norms should have been followed at that stage and only one or two candidates are eligible as per UGC norms, it cannot be assumed at this stage that the University would have confined its selection to such candidates. On the other hand, it is quite possible that the University would have invited fresh applications for securing the presence of more number of candidates. Be that as it may, since one of the candidates other than the petitioner and the Respondent No.4 was also eligible, it is impossible to come to a conclusion that had UGC norms been followed by the University, the petitioner alone would have been selected. For the aforesaid reasons, I am unable to accept the submission of the learned counsel for the petitioner that a direction should be issued regarding appointment of the petitioner.

11. Since admittedly the post has now fallen vacant, it goes without saying that the University would take appropriate steps to fill up the vacancy in accordance with the rules and norms applicable. It goes without saying that if a fresh application is filed by the petitioner, her application for selection should be considered along with other eligible candidates and the fact that the petitioner had filed a case against the University shall not be considered as a disability and the respondents should not be prejudiced by such a factor.

12. Subject to the aforesaid observations, the writ petition is disposed of. No costs.

Index : Yes

Internet: Yes

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To
1. Manonmaniam Sundaranar University, Tirunelveli, rep. by its
Registrar

2. The Selection Committee, constituted for the post of Librarian,
Manonmaniam Sundaranar University, rep. by its Chairman, Tirunelveli.